IN THE HIGH COURT OF PUNJAB AND HARYANA, CHANDIGARH

F.A.O.NO.511 OF 1989
DATE OF DECISION: 2.8.2006

Baldev Raj ..Appellant

Versus

Karnail Singh and others ..Respondents

CORAM: HON'BLE MR. JUSTICE H.S.BHALLA

PRESENT:- Mr. B.S.Sehgal, Advocate
With Mr. Rajesh Sehgal, Advocate
For the appellant.

Mr. N.K.Khosla, Advocate
For respondent No.2.

H.S.BHALLA,J.

Feeling aggrieved against the award dated January 25,1989 passed by Motor Accident Claims Tribunal, Hoshiarpur (hereinafter referred to as "the Tribunal") vide which the claim petition filed by the appellant was dismissed, the appellant has knocked the door of this Court by filing the present appeal praying for setting aside the award passed by the tribunal.

The facts, in brief, required for disposal of this appeal are that on December 23,1987 at about 3.30 P.M. the appellant was proceeding on a link road from village Rampur Bilron on a scooter bearing registration No. PBO-5361. Sukhbir Singh son of Tara Singh, resident of village Jiwan Pur Gujran, was following him on another scooter. Smt. Gian Kaur, sister of the claimant-appellant, was also seating on the rear seat of the scooter, which was being driven by Sukhbir Singh. When Baldev Raj claimant reached near the junction of the link road and the main road, he saw that a taxi car bearing registration No.CH-2582 was coming from the side of

Garhshankar and was proceeding towards Hoshiarpur, which was being driven by Karnail Singh in the middle of the road in a rash and negligent manner and as soon as, Baldev Raj entered the main road, the said driver of the taxi car suddenly came towards its right side and struck against his scooter bearing registration No.PBO 5361 as a result of which, the glass pieces of the right head light of the car pierced into the stomach of the appellant. Also his right leg was badly damaged at the thigh and below the knee joint. On account of the injuries sustained by him, he became unconscious. The injured was taken to Civil Hospital, Garhshankar and then to S.D.Mission Hospital. Nawan Shahar and from there, he was referred to C.M.C. Hospital, Ludhiana. It has also been averred in the petition that he was taken by Karnail Singh in a taxi car bearing registration No. CH-2582 upto Nawan Shahar, but he refused to carry him to C.M.C. Hospital, Ludhiana on account of which, another taxi belonging to Mangat Ram was arranged by his sister Gian Kaur to take the injured to C.M.C.Hospital, Ludhiana. It has also been averred in the petition that although police visited C.M. C. Hospital, Ludhiana, but no case was registered against the driver of the offending vehicle. The accident was witnessed by Smt. Gian Kaur, Sukhbir Singh and Sukhchain Singh, residents of village Garhshankar. The appellant-claimant filed the claim petition before the learned tribunal for grant of compensation.

On the other hand, a written statement was filed by respondent No.1 averring therein that neither respondent nor his vehicle was ever involved in any accident and as such, no claim petition is maintainable. The stand taken by respondent No.1 is that on receipt of message from his uncle Comrade Karnail Singh, resident of village Maula at about 3.00 P.M., where the claimant was lying unconscious, he was going towards Hoshiarpur. On a signal being given to him, he stopped his car and he was requested to

take the injured to the hospital, but as he was in a hurry, he, refused to accede to the request made by them. In the meantime, another car came and stopped there, which was going towards Garhshankar. The driver of the said car agreed to take the injured to the hospital and he left for Hoshiarpur and did not accompany the injured. It has also been averred in the written statement that at that relevant time, one Palwinder Singh was also accompanying him.

In the written statement filed by United India Insurance Company, it has been admitted that Fiat car bearing registration No.CH-2582 was insured vide policy No.110508/22/1/398 for the period from 3.10.1987 to 2.10.1988 on the terms and conditions contained in the Insurance policy. It has also been pleaded in the written statement that the accident did not take place on the date of alleged accident. A specific stand was taken by the Insurance Company that Baldev Raj was coming from the side of Rampur Bilron through a link road at a very fast speed. He was driving the scooter at a very fast speed. When he tried to approach G.T.Road, i.e., Garhshankar Hoshiarpur road from a link road at a fast speed, he could not see the truck coming from the side of Saila Khurd and the scooter became out of his control and in that process, it struck against the truck. In the meantime, a car bearing registration No. CH 2582 came there and people of the nearby area, who had gathered there, stopped the car and asked Karnail Singh, respondent No.1, to take the injured to the hospital, but he refused to oblige them as he himself was in a hurry. The injured was taken to the hospital by another car, which, in the meantime, came there. Subsequently, Karnail Singh, respondent No.1, came to Hoshiarpur. It has been specifically pleaded that no accident took place with car bearing registration No. CH 2582 and as such, the Insurance Company is not liable at all. Respondent no.2 has also pleaded that no criminal case

was registered regarding the accident against Karnail Singh. The insurance Company has prayed for dismissal of the claim petition.

The learned tribunal, after framing of issues and going through the oral as well as documentary evidence minutely, dismissed the claim petition filed by the claimant-appellant, while passing his award dated January 25,1989.

I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

Learned counsel appearing for the appellant has vehemently contended that the approach of the learned tribunal in dismissing the claim petition of the claimant-appellant is contrary to the evidence led by the claimant in support of his claim. Learned counsel has further vehemently contended that the learned tribunal has misread the evidence available on the record and has not taken into consideration the same in its entirety while arriving at a conclusion, which was not in consonance with the material available on the record. In the light of the ocular as well as medical and documentary evidence available on the file and the contention raised by the learned counsel for the appellant, the case of the appellant has to be examined minutely by this Court.

I have gone through the award passed by the learned tribunal and find that he has dealt with all the issues framed in the claim petition by discussing the ocular evidence produced by both the parties minutely and in an elaborate manner giving sound reasoning in support thereof in not holding the driver of the offending car bearing registration No. CH-2582 guilty of driving the same in a rash and negligent manner answering issue No.1 against the claimant-appellant and in favour of the respondents.

The claimant-appellant, in support of his case, has stepped into the witness as PW-3 and deposed that on 23.10.1987 at about 3 or 3.30

P.M. he was going from village Bilron Rampur to Garhshankar on a scooter bearing registration No. PBO 5361. When he reached on the junction of the main road, he saw a car bearing registration No. CH 2582 coming from Garhshankar side, which was proceeding towards Hoshiarpur at a high speed in a zig zag manner being driven by Karnail Singh respondent, resulting in striking against his scooter on account of which, he sustained number of injuries on the vital part of his body. According to this witness, on the date of accident, he was being followed by Sukhbir Singh and his sister on another scooter. Sukhbir Singh and Gian Kaur also stepped into the witness box as PW-2 and PW-4. PW-2 Sukhbir Singh deposed that Baldev Raj had taken his scooter for his personal work, but he did not turn up within the stipulated period and as such, he, and sister of Baldev Raj, had gone in search of him. According to this witness, the accident had taken place, while he and Gian Kaur were following him on another scooter and Baldev Raj had sustained serious injuries. According to this witness, when the injured was taken to hospital by Karnail Singh in his car, no body accompanied him. However, Gian Kaur, sister of Baldev Singh, had gone to the hospital separately. In his cross-examination, Sukhbir Singh (PW-2) has deposed that he did not try to lodge the report with the police in respect of the accident. He has further stated in his cross-examination that the car was not being driven in a zig zag manner. It has also come in evidence that Sukhbir Singh was working as a Clerk in Government Department and his office hours were from 9.00 A.M. to 5.00 P.M. In order to show that he was present at the place of accident, it was stated by him that on that day, he was on leave for one hour from the office, but in this regard no documentary evidence was brought on record to show that in fact, he was on leave for one hour from the office on the date of the accident. The conduct of these witnesses can also be gauged from the fact that they did not accompany the

injured to the hospital after the accident had taken place and even Gian Kaur, who was the sister of the injured, had, allegedly, gone to the hospital later on separately and no report was lodged either by Sukhbir Singh or Gian Kaur with regard to the accident speak volumes against them. Gian Kaur appeared in the witness box as PW-4 and supported the version in the manner in which Sukhbir Singh (PW-2) narrated before the learned tribunal. The statements of these two witnesses do not inspire confidence on material particulars. Even Dr. P.E.Krishna, Medical Officer, Incharge S.D.Mission Hospital, Nawan Shahar, who stepped into the witness box as PW-5 did not say anything about the admission of the injured in the hospital by any female. Rather, the injured was brought in the hospital for treatment by a male attendant. In the facts and circumstances explained above, it can easily be inferred that the injured was not brought by Gian Kaur (PW-4) and her presence at the time of the alleged accident seems to be doubtful. The conclusion arrived at by the learned tribunal on the basis of the statements given by the aforesaid two witnesses being discrepant on material particulars, holding their presence at the time of alleged occurrence doubtful, to my mind, appear to be correct. The finding recorded by the learned tribunal that the accident did not take place on account of rash and negligent driving of car bearing registration No. CH 2582 by Karnail Singh, respondent No.1, does not call for any interference and the same is hereby affirmed.

For the reasons recorded above, appeal filed by the appellant fails and is hereby dismissed.

2.8.2006 (H.S.BHALLA)
vk JUDGE